PUBLIC PROSECUTOR v. LIM HOCK SENG

[R. Cr. J. (Adams J.) September 25, 1962]

[Muar — Criminal Revision No. 6 of 1962]

Road Traffic — Forfeiture — Inquiry — Opportunity to be given to owner before forfeiture order — Road Traffic Ordinance, 1958, s.92(1) and (4).

Criminal Law and Procedure — Transfer of President during hearing or inquiry — Successor may continue — Criminal Procedure Code (Cap. 6), s.261.

The respondent was convicted of two offences under section 92(1) of the Road Traffic Ordinance, 1958. At the end of the case the learned President before exercising his duties under section 92(4) called upon the respondent to show cause as to why the vehicle should not be forfeited under the provisions of that section. Before any enquiry could take place the President was transferred elsewhere and the matter was brought before his successor. The latter refused to entertain any enquiry on the ground that forfeiture under that section is mandatory without enquiry.

Held: (1) the learned President was wrong because all that is mandatory is that there should be an order either ordering forfeiture or ordering release. It follows, therefore, that if the driver who is prosecuted is not the true owner, the true owner ought to be given an opportunity to be heard before order of forfeiture is made;

(2) under section 261 of the Criminal Procedure Code whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial ceases to exercise jurisdiction therein his successor may act on the evidence so recorded. There was no reason why the learned President should not have continued with the enquiry as directed by his predecessor.

CRIMINAL REVISION.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

Respondent in person.

Adams J. (delivering oral judgment): This is an application on revision by the learned Deputy Public Prosecutor and the facts are as follows.

The respondent was convicted of two offences under section 92(1) of the Road Traffic Ordinance, 1958. The vehicle that he was operating as what is commonly known as a pirate taxi was No. SB. 954. At the end of the case the learned President, Inche Mohamed bin Yaacob, before exercising his duties under section 92(4) of the Road Traffic Ordinance (the vehicle being the subject of a hire-purchase agreement) called upon the respondent to show cause as to why the vehicle should not be forfeited under the provisions of section 92(4) of the Road Traffic Ordinance. Before any enquiry could take place the learned President was transferred elsewhere and the matter was brought before Inche Hamzah bin Mohd. Salleh who was his successor. He refused to entertain any enquiry on the grounds that forfeiture under section 92(4) is mandatory without enquiry. With respect to the learned President this is wrong. All that is mandatory is that there should be an order either ordering forfeiture or ordering release. It follows, therefore, that if the driver who is prosecuted is not the true owner, the true owner ought to be given an opportunity to be heard before order of forfeiture is made. Under section 261 of the Criminal Procedure Code whenever any Magistrate after having heard and recorded the whole or any part of the evidence in an enquiry or a trial ceases to exercise jurisdiction therein his successor may act on the evidence so recorded.

It seems to me, therefore, that there was no reason why the learned President should not have continued with the enquiry as directed by his predecessor and the matter must be sent back to him with a direction that he should hear it and he should also cause the hire-purchase company to be served with a notice so that they may also have an opportunity of making representations to him.

Order accordingly.

PUBLIC PROSECUTOR v. TAN TENG GAK

[A. Cr. J. (Adams J.) September 25, 1962]

[Muar — Originating Motion No. 8 of 1962]

Criminal Law and Procedure — Application for extension of time for filing notice of Appeal — Motion for — Affidavit in support of — Fact, statutory provision, etc. to be included therein — Criminal Procedure Code (Cap. 6), s.310.

Posts and Telegraph — Postal delays.

In drafting an affidavit in support of a motion for extension of time for filing notice of appeal the fact that the learned Deputy Public Prosecutor has checked the despatch book should be included in the body of the affidavit and an affidavit should be included sworn by the clerk posting the notice. In the affidavit the section and the Ordinance under which the respondent had been originally charged should be shown because a Judge before granting an application of this nature would normally like to call for the records to satisfy himself that there are possible reasonable grounds for interfering with the acquittal of one of His Majesty's subjects.

Observations on postal delays

CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the applicant.

Respondent in person.

Adams J. (delivering oral judgment): This is an application by the Public Prosecutor by way of Motion for extension of time for filing notice of appeal.

The facts alleged in the affidavit sworn by the learned Deputy Public Prosecutor on the 18th September in support of the Motion show that the notice of appeal was sent from the office of the Deputy Public Prosecutor on the 27th August, 1962. The last date for filing such notice of appeal was the 28th August. The notice of appeal was not received in the Batu Pahat Court until the 6th September, 1962.

In drafting the affidavit in support of a motion of this nature I think the fact that the learned Deputy Public Prosecutor has checked the despatch book should be included in the body of the affidavit and an affidavit should be included sworn by the clerk posting the notice. I also considered that in the affidavit the section